# shreya singhal case and it’s impact on indian society



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# shreya singhal case and it’s impact on indian society AAYUSH AKAR

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**BACKGROUND OF THE CASE**

In November 2012, a Facebook status update was posted by 21-year-old Shaheen Dhada from Palghar, Maharashtra, insinuating that Mumbai had shut down in fear, rather than out of respect for the funeral procession of Shiv Sena founder Bal Thackeray. Dhada and her friend Rini Srinivasan, who' liked' the status update, were arrested within hours of the update, interrupting the forced calm that enveloped Mumbai after the death of Thackeray. Dhada was charged under the Indian Penal Code Section 295A and the notorious Section 66A of the Information Technology Act, 2000. The arrested girls were released later and it was decided that the criminal cases against them would be dropped, yet their arrests pulled in protest across the country. It was assumed that the police abused their authority by invoking Section 66A at the same time as it constitutes a violation of the fundamental right of speech and expression. The crime under section 66A of the IT Act is clear, law enforcement agencies are allowed to detain or prosecute without warrants on the basis of charges brought under the IT Act. This resulted in many highly renowned arrests of people across the country for posting their views and opinions, while Government called them' objectionable content,' but more often these contents were dissenting political views. The Central Government had turned out in January 2013 with an advisory under which no person could be arrested without prior approval from police inspector general or any other senior officer to him/her by the police. In the single PIL case known as "**Shreya Singhal v. Union of India**",[[1]](#footnote-1) the Supreme Court called the entire petition related to the constitutional validity of the information technology act or any section within it.

**INTERNATIONAL LAW RELATED TO FREEDOM OF SPEECH AND EXPRESSION**

The right to freedom of expression is articulated under Article 19 as Human Right in Universal Declaration of Human Right as well as in International Covenant on Civil and Political Rights which states that “everyone shall have the right to hold opinions without interference” and “everyone shall have the right to freedom of expressions; this right shall include freedom to seek, receive and impart information’s and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. On July 5, 2012, the United Nations Human Rights Council overwhelmingly adopted a resolution to safeguard people's freedom of speech on the internet.

**FACTS IN ISSUE**

A written petition is filed by the applicant in the public interest pursuant to Article 32 of the Constitution of India, seeking to make Section 66A, 69A and Section 79 unconstitutional on the basis that the phraseology used in Section 66A, 69A and Section 79 of the IT Act, 2000 is so broad and vague and, at the same time, unable to be evaluated on objective standards that it is susceptible to abuse. The petitioner further claims that the words, menacing, disruptive, irritation, nuisance, interference, risk, and insult were not specified in the General Clauses Act, the IT Act, or any other statute, and are therefore susceptible to abuse. The petitioner also urged that the clause should create an arbitrary distinction between people, on the one side, and netizens, on the other, as the independence usually provided by Article 19(1)(a) to individuals, including the general media, is now being eroded as regards netizens. When netizens make comments that may be made by citizens in general, they may be detained. That is how this clause contradicts Article 14.

**PETITIONER'S ARGUMENT**

1. Section 66A excludes the freedom of speech and expression granted under Article 19(1)(a) and is not safeguarded by the reasonable limit referred to in Article 19(2).
2. It is outside the reach of Article 19(2)(c) to cause annoyance, discomfort, etc.
3. Section 66A seeks to create an offense but has infirmity and vice of vagueness because the terminology used in it is not clearly defined. The terminology used is subjective in nature and remains open to law enforcement agencies ' desire and willingness to interpret it. There's no limitation.
4. Article 14 has been violated because there is no intelligible distinction as to why this provision was addressed only by one means of communication.

**RESPONDENT'S ARGUMENTS**

* 1. The legislature is in the strongest position to meet people's needs, and the judiciary will only weigh in when a statute is explicitly in violation of Part III and the legislation in dispute is believed to be legal.
  2. In this way, the Court would construe a law to make it practical, and in doing so, it would be able to read or read the laws.
  3. Only the probability of violence cannot justify making a rule null.
  4. Loose Language is used to defend people's rights from those who use this medium to threaten them.
  5. Vagueness is not a reason to declare unconstitutional a law if it is actually eligible and unarbitrary.

**FREE SPEECH**

The Indian constitution's preamble guarantees freedom of thought and expression, and it is of key importance. The right to freedom in Article 19 guarantees the freedom of speech and expression recognized in the case of **Maneka Gandhi v. Union of India**,[[2]](#footnote-2) where the Supreme Court held that freedom of speech and expression has no geographical limitation and moves with a citizen's right to collect information and exchange ideas with others, not only in India but also abroad.

In the case of **Romesh Thappar v. State of Madras**,[[3]](#footnote-3) it was claimed that "Freedom of speech and expression that of the media lies at the base of all democratic institutions, without free political debate, no public education is possible that is necessary to the proper functioning of the popular government system." Freedom of speech and expression includes the right to communicate and receive information like freedom of expression. In the case of **Union of India v. Association for Democratic Reforms and Anr**,[[4]](#footnote-4) the Supreme Court held that "One-sided information, disinformation, misinformation and non-information all create uninformed citizenship that makes democracy a farce. Freedom of speech and expression includes the right to communicate and receive information, including freedom of expression. The most essential of all freedoms is freedom of speech and expression. In the leading case of **Bennett Coleman v Union of India**,[[5]](#footnote-5) it was observed that freedom of speech and of the press is the ark of the covenant of democracy because the evaluation of people's views is vital to the functioning of the democratic institution.

The Supreme Court in the case of **Sakal Papers v Union of India**[[6]](#footnote-6) observed that, under a constitutional system, freedom of speech and expression is one of the most important principles. Similarly, in the case of **S. Khushboo v Kanniammal and Anr**,[[7]](#footnote-7) the Apex Court observed that freedom of speech and expression is necessary for essence, even if it is not absolute as we must accept unpopular views. The right to freedom of speech and expression includes the free flow of views and opinions that are crucial to sustaining social existence. The practice of public discussion is of great social importance.

**U.S. AND INDIA**

In the case of **Whitney v. California**,[[8]](#footnote-8) Justice Brandeis declared that the Liberties should be viewed as a means as well as a goal and a fair excuse should be offered for concern that if such freedom of speech is exercised, significant evil will follow.

2. The Supreme Court has long questioned whether or not the U.S.

Is it necessary to make decisions in the sense of Art. 19? Three amendments have been made:

* The first amendment of the United States is absolute and Congress shall make no law which abridges freedom of speech.
* US first amendment expresses freedom of speech and of the press without any reference to expression whereas Article 19(1)(a) speaks of freedom of speech and expression without any reference to the press.
* Under U.S. law, speech may be abbreviated if obscene, libelous, lewd, and profane, while under Indian law it is subject to eight elements referred to in Article 19(2).

The only distinction between the U.S. and Indian freedom of speech and expression is that if there is a legitimate need in the U.S. to accomplish a major government agenda or objective, a rule pass the test, but in India if it is not covered by eight subjects it will not pass the muster test.

**CONSTITUTIONALITY OF 66A**

In the context of information, there are three concepts essentials to understand the Freedom of Expression: -

a. Discussion

b. Advocacy

c. Incitement

The first is discussion, the second is advocacy and the third is incitement. Clear debate or even advocacy of any particular cause is at the core of Article 19(1)(a), no matter how despised, controversial or hated. Article 19(2) is only initiated when any such discussion or advocacy steps into the level of incitement. It is at this stage/level that legislation may be drawn up to curb speech or expression that inexorably leads or tends to cause public disorder or is likely to cause or appear to affect India's independence and dignity, national security, friendly relations with other countries, etc.

Furthermore, in order to curtail the freedom referred to in Article 19(1)(a), the ground must qualify the test referred to in Article 19(2), which lists only eight conditions or elements but does not pass the muster test and element of Article 19(1)(a).

**PUBLIC ORDER**

'Public Order' is a term that refers to a state of peace and tranquillity that prevails over and among the members of a society as a consequence of the internal laws imposed by the State which has formed the rule in due course.

In the case of **Dr. Ram Manohar Lohia v. State of Bihar and Others**,[[9]](#footnote-9) the Supreme Court acknowledged the distinction between the preservation and disturbance of law and order and the management and interruption of public order. Public order was said to enfold more of the society and group than law and order. Public order is the orderly and peaceful state in which the government or culture as a whole takes the nation as a whole or even a specific location. Disruption of public order should be differentiated from acts aimed against or against persons who do not disrupt society to the degree or level which creates a general breach of public tranquillity. It is the degree of disruption and its effect on community life in a locality which determines whether the disturbance will only result in a violation of law and order.

**ON CLEAR AND PRESENT DANGER AND TENDENCY TO AFFECT**

Whether the terms used in such situations are used and are of such a kind as to establish a clear and present danger that the fundamental dangers will be brought on. It's a matter of proximity and degree. It should not be far-fetched, remote or conjectural to the expected danger. It must have a direct and immediate connection to the expression. The expression of thought should be substantially dangerous to the public interest or to say the expression must be bound up with the action inseparably. This is called the "clear and present danger" test.

**ON DEFAMATION**

It must be noted that reputation injury is an essential ingredient for something to be defamatory. Section 66A does not deal explicitly or impliedly with a reputational injury. There may be something grossly offensive and offensive or inconvenient to someone, but it may not harm his credibility. Therefore, it is known that Section 66A is not meant for defamatory statements.

**ON DECENCY OR MORALITY**

In the case of **Doordarshan v. Anand Patwardhan's Directorate-General**,[[10]](#footnote-10) the Supreme Court observed the law in the United States of America and said that a material could be considered obscene if the average person applying contemporary society or community standards discovered that the subject matter as a whole appealed to the prurient interest and that it would otherwise be taken as a whole.

Section 66A cannot reasonably be said to characterize a crime that fits within the context of "decency" or "morality."

Under Section 66A, what could be grossly offensive or unpleasant need not be inherently obscene? Throughout Section 66A, the term 'obscene' is absent.

**ON INCITEMENT TO AN OFFENCE**

Under the Indian Penal Code, the pure cause of the discomfort, distress, threat, etc., or being grossly offensive or possessing a dangerous character is not at all described as offenses. They are components of certain offenses under the Indian Penal Code, but in themselves, they are not crimes. Having these factors into consideration, Section 66A does not necessarily have anything to do with "incitement to commit an offense". Section 66A strongly curtails data that can be sent to the Online on the grounds of whether it is irritating, grossly offensive, uncomfortable, etc. and not relevant to any of the eight requirements alluded to Under Article 19(2), thus, it fails to pass the sample test set out in Article 19(2). It, therefore, violates Article 19(1)(a).

**ON VAGUENESS**

The terms used to shape the crime under section 66A were subjective and relative in meaning. That the terms used in the Section are so ambiguous and unclear that it is not practicable to alert an accused person as to what exactly is the crime perpetrated by him/her at the same period that the officials enforcing the Section are not aware on which side of a clearly defined border of a particular correspondence any phrase used is of vague importance. It may not be disrespectful to others what might be offensive to one. What may cause one irritation or discomfort may not trigger other people's annoyance or inconvenience.

When their limitations are not clearly defined, it is an essential element of due process that a statute is invalid for vagueness. Vague laws offend a lot of important values. First, because we assume that man is free to steer between lawful and unlawful behavior, we insist that laws provide a reasonable opportunity for the person of ordinary intelligence to know what is prohibited so that he can act accordingly. By not having a just and reasonable notice, ambiguous laws can mislead innocent people.

Second, in order to avoid unfair and unreasonable compliance, legislation should provide those who administer them with specific and consistent requirements. An unclear rule impermissibly gives the police, juries and judge’s basic policy matters of ad hoc and discretionary settlement, with the extreme risks of unilateral and unequal implementation. In the case of **Kartar Singh v. State of Punjab**,[[11]](#footnote-11) it was noted that if its prohibitory implementation is not clearly defined, it is one of the core principles of constitutional jurisprudence that a statute must be void of vagueness.

A most fundamental principle of our legal system is that enactments governing persons or institutions will provide illegal or permissible fair and reasonable notice of actions. In the case of **Connally v. General Constr. Co.**,[[12]](#footnote-12) it was observed that a statute which either prohibits or requires an act to be performed in a language is so vague that men of common intelligence must necessarily conjecture or predict its meaning, and confused as to its application, infringes the first fundamental of the due process of law. This essence of clarity in the Regulation is essential to the Due Process protections. It requires laws that are impermissibly vague to be scrapped. A punishment or prosecution does not conform to due process if the law or regulation under which it is imposed "fails to provide a man of ordinary intellect with a reasonable warning of what is forbidden or is so ambiguous that it authorizes severely unequal compliance".

**ON CHILLING EFFECT AND OVER BREADTH**

Section 66A is so common that it would mean that any views on any subject would be protected by it, as any serious views that conflict with the majority or approved person of the day would be caught within its framework. Section 66A is also unconstitutional on the point that it considers, within its purview, protected free speech that is innocent in nature and may, therefore, be used in such a way as to have a chilling effect on free speech and would, therefore, have to be invalidated on the ground of over-broadness.

**ON PRESUMPTION IN FAVOUR OF CONSTITUTIONALITY OF ENACTMENT**

The possibility of abuse of an act which is otherwise valid does not give rise to any element of invalidity. The reverse must also mean that by implementing it in a reasonable manner, a rule that is otherwise not legitimate or unfair cannot be protected. The legal legitimacy of the statute should be assessed as objectively read on the grounds of its terms and on the nature of its application. If it is so determined that it passes the test of reasonableness, the probability that the powers granted are misused is no reason to declare the statute itself invalid and similar if the legislation properly understood and checked in the light of the conditions laid down in Part III of the Constitution of India does not pass the test that cannot be declared null only because it is applied in a manner which will conflict constitutional safeguards. In fact, reasonable and fair execution relies on the government entity and then it becomes open for case-by-case cases to be reviewed by the court resulting in a miscarriage of justice.

**ON DOCTRINE OF SEVERABILITY UNDER ARTICLE 31(1)**

In any event, Hon'ble Court may come into play with the Doctrine of Severability as mentioned under Article 13, not being satisfied with the constitutional legitimacy of either any term or part of the law. Under Article 13(1), an existing law that is not consistent with any fundamental right is null and void only to the inconsistency ratio and not further. The reasoning given by the respondent is vague and ambiguous because it does not show explicitly that portion of section 66A can be spared.

That Section 66A maintains that it sanctifies the application of the restrictions on fundamental rights set out in Article 19(1)(a) in a language that is sufficiently broad to protect restrictions both within and without the limits of constitutionally valid legislative action.

In the case of **Romesh Thappar v. State of Madras**, the question concerned the validity of Section 9(1A) of the Madras Public Order Maintenance Act, 23 of 1949. The provision allowed the provincial government to ban a newspaper's entry and distribution within the state "for the purpose of ensuring public safety or maintaining public order". Subsequent to the promulgation of this Statute, the Constitution of India entered into force and the legitimacy of the provision relied on whether it was covered by Article 19(2), which preserved ‘existing law in so far as it relates to any matter that undermines the security of the State or which threatens to overthrow the State’. It was held by this Apex Court that since the purposes set out in Section 9(1-A) of the Madras Act were broader in scope than those set out in Article 19(2), and since Section 9(1-A) could not be divided into what was within and what was without the protection of Article 19(2), the provision must fail in its entirety. This case also deals with a breach of Article 19(1)(a); it would enforce the decision of Romesh Thappar.

**ON ARTICLE 14**

The petitioners submitted that Article 14 is also infringed in that an offense whose components are vague in nature is unreasonable and undefined and would result in the application of the law is discriminatory and arbitrary. Furthermore, there is no intelligible differentiation between the media of broadcasting, printing, and live speech as opposed to speech on the internet and therefore, on this ground, no new class of criminal offenses can be made. Similar offenses committed on the internet have a maximum sentence of three years.

Apex Court disagrees with the petitioners that there is no intelligible difference between the media of broadcasting, printing, and real-live speech as opposed to Internet speech. Apex Court held that there is an intelligible difference in the way that the Internet gives anyone a platform that needs very little or no payment to air their views and anything posted on a website or website travels with the speed of light and reaches millions of people around the world. Apex court states that there is a smart difference between online speech and other communication media for which legislation can certainly create separate offenses.

**ON SECTION 69A AND 79**

According to Section 69A blocking of the website can only take place by a direct and reasonable order after having followed certain procedural rules and protections which also include a hearing to the originator and intermediary. There are two forms in which a website blocking order can be passed-first by the designated officer while compliance with the 2009 Rules and second by the designated officer when he has to operate on the order handed down by the competent court.

The intermediary who uses his own prudence to assess whether or not data must be barred is notably absent from Section 69A read with the 2009 Rules. Exemption from intermediary responsibility is specified in section 79(3)(b) where the intermediary has real knowledge (certified copy of the warrant) that a court order has been issued directing the intermediary to delete or block access to specific material without delay if they fail to remove or block access to that material without delay. This is because otherwise, it would be very difficult for intermediaries such as Facebook, Google, etc. to follow the order when lakhs of requests are pending and the intermediary is then to verify which of these requests are reasonable and which are not. It was noted that this view has gained acceptance in other countries around the world (exemption of intermediaries under similar conditions). Apex Court held that the Court's order or notification and direction by the government or its appropriate agency should be strictly in line with the subject matter set out in Article 19(2). It is clear that unlawful acts beyond the provisions of Article 19(2) cannot form part of Section 79.

**MARKET PLACE OF IDEAS BY JUSTICE HOLES**

The principle of the marketplace of ideas suggests that, with limited or no state intervention, a laissez-faire policy response to the rule of speech and expression, plans, thoughts, hypotheses, and campaigns can fail or succeed on their own terms if left to their own cautious devices, free individuals will be able to filter in a free environment of competition and deliberation by competing views.

John Stuart Mill extended this idea by arguing that free expression is important for individuals and society because it allows man's moral mental faculties to be maintained and strengthened and is a leading resource to promote the search for truth. Milton and Mill's influence was distinctly seen in the case of Justice Oliver Wendell Holmes, dissent decision in **Abrams v. United States**,[[13]](#footnote-13) which founded the marketplace of ideas as a constitutional notion conventionally. Holmes never used this term "marketplace of thoughts" without any hesitation.

While attractive because there is no empirical evidence to prove that fair, moral just reasons often defeat and prevail over unfair and poor arguments, the theory is highly optimistic. Psychological research shows that people are very quick to accept the perspective which they like or already have, and not to alter it for rational reasons alone. Therefore, caste, patriarchal, politically motivated, class philosophies would rule civilization, not because of the force of its reality, but because of its hegemony over culture.

**JUDGMENT IN A GLANCE**

* 1. Section 66A was completely in violation of Article 19(1)(a) and is not protected in compliance with Article 19(2).
  2. Section 69A and the rules on IT (procedure and safeguard for blocking public access to information) are constitutional.
  3. Section 79 is applicable prior to section 79(3)(b) being interpreted.
  4. Section 118(d) of the Kerala Police Act (public order) was repealed.

**OVERVIEW OF THE JUDGEMENT**

The judgment maintained and safeguarded the freedom of speech and expression granted to individuals pursuant to Article 19(1)(a) of the Indian Constitution and also limited the unconstitutional exercise of force in the sense of the rights referred to in Article 19 of the Constitution. Need further clarification and fine-tuning in respect to the audience because he/she will ask why the government does not require them to have certain data and why it can be called into question.

The Apex Court, however, has put a great deal of confidence in the complex and complicated process of government based on a dicey interpretation of the capacities and resources of the various parties concerned. Of example, the content-blocking legislation has been ruled valid on the presumption and expectation that blocking website laws (2009) provides a reasonable forum and opportunity to be heard and appeal an unlawful blocking order.

This is misleading, many times. It assumes that the originator of the content will be contacted and informed about the blocking of its content and there will be a reasonable opportunity to challenge the blocking of the content. Second the presumption that the broker can explain and protect the material before the government body concerned. All hypotheses are virtually far off the mark.

The very technical nature of the Internet, with its geographical spread and anonymity, makes it possible that the originator of the content may not be contacted due to the fact that the originator of the content may be in foreign countries or may lack the resources to argue and pursue its case. Intermediaries will not fairly safeguard the material because they tend not to spend resources on defending data from third parties. The cumulative impact of this is that unreasonable government blocking orders will continue to affect the information available for access.

The blocking process tends to be shrouded in secrecy by implementing Rule 16 of the Access Blocking Regulations, which allows privacy to be preserved in the case of any blocking orders. This principle was questioned in the case of Shreya Singhal but this policy was left untouched by the Apex Court. Of content creators and audiences to note which government or their company has directed their material to be banned, the hosting site will hold confirmation of the blocking order along with justification.

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